

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 27795 of 1996

Dated: 22.03.2007

Between:

Gottipalla Khasi Bi and another.

..Petitioner.

And

The Vice Chairman & Managing Director, APSRTC,
Mushirabad, Hyderabad and others.

..Respondents.

-
-
-
-
-
THE HON'BLE SRI JUSTICE N.V. RAMANA

-
W.P. No. 27795 of 1996

-
Order:

Petitioner Nos. 1 and 2 are the legal heirs of one Sri. G. Jainullabuddin, who during his lifetime worked with the respondents-APSRTC as Depot Controller. Petitioner No.1 is his wife, while petitioner No. 2 is his son. During the pendency of the writ petition, petitioner No.2 died and his legal heirs, namely his wife and three children were brought on record as petitioner Nos. 3 to 6.

The petitioners state that the date of birth of G. Jainullabuddin, as entered in the service records of the respondents, is 23.11.1936, and in the normal course, he would have retired from service on 30.11.1994 on attaining the age of superannuation, but it is their grievance that the respondents vide order dated 14.08.1992, retired him from service two years before his actual date of retirement on the ground that G. Jainulabuddin's date of birth, as evident from the school certificate produced by him at the time of joining the service, is 01.07.1930, and if the said date of birth is reckoned for computing 58 years of service, he should have been retired from service on 30.06.1988. The petitioners state that G. Jainullabuddin having been retired prematurely, got issued legal notices calling upon the respondents to release his terminal benefits, and as they were not released, the petitioners filed the present writ petition contending that even assuming that G. Jainullabuddin's date of birth is 01.07.1930 and he should have been retired from service on 30.06.1988, but he having been continued in service after that date till he was retired from service on 14.08.1992, is entitled to receive benefits for the said period also, and the action of the respondents in not paying the terminal benefits for the said period, is illegal and arbitrary.

The respondents filed counter and additional counter-affidavit. The respondents stated that G. Jainullabuddin initially did not submit any proof of his date of birth, and as per the APSRTC Regulations, he was referred to medical examination, and the Medical Officer who examined him, fixed his age as 26 years. However, later he produced a school certificate in which his date of birth was shown as 01.07.1930, and the said date of birth was entered in the service register. As per the said date, he ought to have been retired from service on 30.06.1988, but by mistake he was continued in service even after the said date, and on noticing the said lapse, they retired him from service on 14.08.1992. It is stated that he is not entitled to any benefit for the period from 01.07.1988 to 14.08.1992, on which date he was retired from service, and he has to return the excess amounts to the tune of Rs.62,609-92 paise received by him. It is stated that except Rs. 22,425/- towards gratuity, Rs.1,583/- towards settlement salary bill and Rs.2,375/- towards leave encashment upto 30.06.1988, all other benefits were paid.

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents-APSRTC.

In the service record, G. Jainullabuddin's date of birth, is recorded as 01.07.1930, which is said to have been entered, based on the school certificate produced by him, and as per the said date of birth, he would have attained the age of superannuation of 58 years on 30.06.1988. Admittedly, even after the said date, the respondents continued him in service and also paid salary, and on noticing the mistake, he was retired from service on 14.08.1992. The respondents though contended that G. Jainulabuddin is not entitled to receive any benefits for the period from 01.06.1988 to 14.08.1992, the fact remains, they failed to show any provision or rule which disentitles G. Jainulabuddin from receiving salary and other benefits for the said period. In the absence of any provision or rule shown by the respondents, which prohibits the workman from claiming salary and other benefits for the period beyond the date of superannuation, and more so when he worked, the respondents cannot be allowed to contend that G. Jainulabuddin is not entitled to salary and other benefits for the period from 01.07.1988 to 14.08.1992 on which day he was retired from service.

In the peculiar facts and circumstances of the case, I deem it appropriate to dispose of the writ petition with the following directions:

The respondents are directed to pay salary and other benefits to the petitioners (legal heirs of G. Jainulabuddin) for the period from 01.07.1988 till the date of his retirement from service i.e. 14.08.1992 after deducting the amounts, if any, payable by him to the respondents, within a period of three months from the date of receipt of a copy of this order.

Accordingly, the writ petition is disposed of. No costs.

N.V. RAMANA, J.

Date: 22nd March, 2007.
KSR